

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DING MING LIU, XIANG WEI CHEN, JIAN RONG	: Docket No. 08 CV 4199 (GBD)
KE, CHUAN JING LIN, MU QIU LIU, ZHONG MIN	:
SHI, SHENG DA WENG, GUO FENG ZHANG and	:
GUO LI ZHANG,	:
	:
Plaintiffs,	:
	: <u>DECLARATION</u>
- against -	:
	:
JIN JIN COMMERCE CORP., XIN XIN COMMERCE	:
CORP., HAI BING WANG, JANE DOE I, a/k/a "Cindy,"	:
and JANE DOE II, a/k/a "Xiao Yen,"	:
	:
Defendants.	:
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PETER WESSEL, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. This motion is made pursuant to the Stipulation dated July 22, 2008, and So-Ordered on July 29, 2008, a copy of which is annexed hereto.

2. I am the attorney of record for the Defendants herein. JANE DOE I, a/k/a "Cindy," the wife of HAI BING WANG, is actually JIAN-XU SUN, who is also known as "Sandy". JANE DOE II, a/k/a "Xiao Yen," the sister of HAI BING WANG, is actually XIO YEN WANG. This affirmation is submitted in support of the accompanying motion, which seeks to accomplish two (2) objectives, as set forth below. The contents of this Declaration are based on matters known to me through discussions with my clients and investigation that have performed by myself or others on behalf of my clients since I was retained on July 16, 2008.

3. The motion seeks an Order dismissing the complaint as asserted by Plaintiff DING MING LIU ("LIU"), for all his claims dating from May 2002 through April 2007, when he was an owner and manager of the Mee Noodle Shop and Grill restaurant ("Mee Noodle") that

is at issue in this case. As Defendant, HAI BING WANG, attests in the accompanying affidavit, LIU personally supervised and controlled the work of the delivery staff at Mee Noodle from May 2002 through April 2007, and as is explained in the accompanying Memorandum of Law, LIU, as an owner/manager, cannot maintain this action under the Fair Labor Standards Act or under New York State law. Presumably he has shared information with Plaintiffs' attorneys which he gained as an owner/manager of Mee Noodle.¹ Moreover, as an owner/manager, LIU is potentially liable to the remaining Plaintiffs and Defendants intend to bring a counterclaim or third-party claim, as may be appropriate, against LIU on that basis.

4. The motion further seeks an order dismissing those claims which are barred by the applicable Statutes of Limitations (two years under FLSA, or three years upon a finding of a willful violation, and six years under New York State law). All of the Plaintiffs assert claims that would be barred under the FLSA statute, and two of the Plaintiffs – DING MING LIU and CHUAN JING LIN – assert claims that would be barred under the New York statute. Plaintiffs claim that the Defendants' alleged failure to post certain notices regarding federal and state labor laws equitably tolls the respective statute of limitations. As the Memorandum of Law explains, there is no on-point Second Circuit or New York State case in support of this position. Plaintiffs' claims in this regard would require discovery of documents and information dating back as much as twelve (12) years, to the extent they exist. The burdens associated with such claims are onerous due to the inherent problems associated with defending claims that are so old and it also wholly frustrates the entire purpose of statutes of limitations, which is to place some finality to liability. Additionally, it is incredible that LIU (whose claims go all the way back to 1996) only learned about his rights under the FLSA and other laws after at least eleven (11)

¹ In the interest of crystal clarity, this declaration is not submitted to suggest any impropriety by any of Plaintiffs' attorneys.

years working in the restaurant industry, including five (5) years as a part-owner and manager of a restaurant business. Furthermore, LIU's claim of not knowing the law is not one that would have any effect on his liability as an owner-manager. In fairness to the Defendants, the statute of limitations issue should be determined prior to the commencement of wide-ranging discovery.

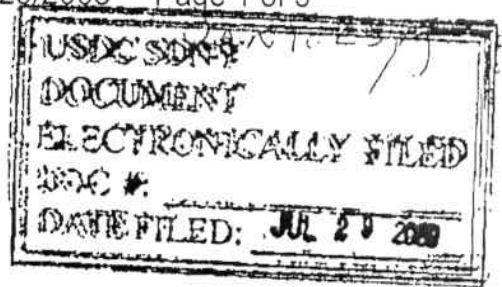
5. Defendants' hope that this matter can be resolved without protracted litigation at the earliest time possible.

6. Defendants reserve the right, pursuant to Your Honor's Individual Practices Section 2(E), to request oral argument of this motion at the time reply papers are filed.

Dated: New York, New York
August 18, 2008



PETER WESSEL (PW 4164)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DING MING LIU, XIANG WEI CHEN, JIAN RONG
KE, CHUAN JING LIN, MU QIU LIU, ZHONG MIN
SHI, SHENG DA WENG, GUO FENG ZHANG, and
GUO LI ZHANG,

Plaintiffs,

- against -

JIN JIN COMMERCE CORP., XIN XIN COMMERCE
CORP., HAI BING WANG, JANE DOE I, a/k/a
"Cindy", and JANE DOE II, a/k/a "Xiao Yen,"

Defendants.
-----X

STIPULATION

Case No. 08 CIV 4199 (GBD)
HON. GEORGE B. DANIELS, USDJ

WHEREAS, THE LAW OFFICE OF PETER WESSEL, PLLC, with offices at 270 Madison Avenue, Suite 1203, New York, New York 10016-0601, by PETER WESSEL, ESQ. (hereinafter "counsel for Defendants"), represents that it was retained on July 16, 2008, by the Defendants known as JIN JIN COMMERCE CORP., XIN XIN COMMERCE CORP., HAI BING WANG, JIAN-XU SUN and XIAO YAN WANG (hereinafter referred to as the "Defendants"); and

WHEREAS, counsel for Defendants electronically filed Notices of Appearance on July 16, 2008, to reflect such representation of said Defendants and thereby notified LINKLATERS LLP, with offices at 1345 Avenue of the Americas, New York, New York 10105-6026, and URBAN JUSTICE CENTER, 123 William Street, 16th Floor, New York, New York 10038-3800, which firms are co-counsel for Plaintiffs DING MING LIU, XIANG WEI CHEN, JIAN RONG KE, CHUAN JING LIN, MU QIU LIU, ZHONG MIN SHI, SHENG DA WENG, GUO FENG ZHANG, and GUO LI ZHANG (hereinafter referred to as "counsel for Plaintiffs"); and

WHEREAS, counsel for Defendants has indicated the need for thirty (30) days to more fully inquire about the facts and circumstances of the claims herein for the purpose of serving and filing an answer or a motion, and

WHEREAS, counsel for Defendants has indicated that in consideration of counsel for Plaintiffs' agreement to the instant extension of time to answer or move, Defendants shall waive the affirmative defense of lack of *in personam* jurisdiction; and

WHEREAS, by Order of the Court, filed July 15, 2008 (copy attached), the Initial Pretrial Conference herein, which was scheduled for July 22, 2008, has been adjourned to September 4, 2008:

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for Defendants and counsel for Plaintiffs, that Defendants' time to answer or serve and file a motion in response to the complaint shall be extended to August 18, 2008, *nunc pro tunc*; and

IT IS HEREBY STIPULATED AND AGREED that the Defendants waive the affirmative defense of lack of *in personam* jurisdiction; and

IT IS FURTHER STIPULATED AND AGREED that facsimile signatures herein shall be considered and constitute original signatures for all purposes herein.

Dated: July 22, 2008

LAW OFFICE OF PETER WESSEL, PLLC



PETER WESSEL (PW-4164)
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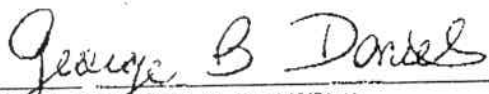
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SO ORDERED: JUL 23 2008



HON. GEORGE B. DANIELS
UNITED STATES DISTRICT COURT JUDGE
HON. GEORGE B. DANIELS